



United States Attorney
Eastern District of New York

JAJ:AEG/SD
F.#2007R02181

271 Cadman Plaza East
Brooklyn, New York 11201

March 10, 2010

By Hand and ECF

The Honorable Sterling Johnson, Jr.
United States District Judge
Eastern District of New York
225 Cadman Plaza East
Brooklyn, NY 11201

Re: United States v. Thomas Archer et al.
Criminal Docket No. 08-288 (S-1)(SJ)

Dear Judge Johnson:

The government respectfully and out of an excess of caution requests that the Court schedule a hearing pursuant to United States v. Curcio, 680 F.2d 881 (2d Cir. 1982), to address a potential conflict of interest on the part of Thomas Archer's attorney, Karina Alomar, Esq., arising out of her representation of one of Archer's co-defendants in a civil case pending in New York Civil Court.

In April 2007, Grigori Zaichik sued Archer, HK Investigations Co., David J. Gold, David J. Gold P.C., and Stephanie Bowman d/b/a Supreme Judgment Recovery, alleging violations of the Fair Debt Collection Practices Act, 15 U.S.C. § 1692 et seq., and New York General Business Law § 349. (See Verified Class Action Complaint (N.Y. Sup. Ct. Apr. 13, 2007) (hereafter "Compl."), attached hereto as Exhibit A). Ms. Alomar represents Bowman in the case. (See Notice of Motion for Summary Judgment Pursuant to CPLR 3212, Index No. 300560TS07 (N.Y. Civ. Ct. Feb. 19, 2009) (hereafter "Notice"), attached hereto as Exhibit B). According to the complaint, Gold sued Zaichik for an allegedly unpaid credit card debt, failed to provide him notice of the suit, and obtained a default judgment. (Compl. ¶¶ 17, 21). Gold then hired HK Investigations to collect the judgment. (Compl. ¶ 23). HK Investigations in turn hired Supreme Judgment to collect the judgment. (Compl. ¶ 24). Archer signed an Information Subpoena and Restraining Notice on behalf of Supreme Judgment and HK Investigations, and the subpoena was served on Chase Manhattan Bank, where Zaichik had an account. (Compl. ¶¶ 25, 28). The bank then executed on Zaichik's money. (Compl. ¶ 43). Archer, acting on behalf of Supreme Judgment, also took

action against an account held by Zaichik at Apple Bank. (Compl. ¶¶ 48, 50). Zaichik asserts that the defendants used deceptive means to collect a debt, in violation of state and federal law. (Compl. ¶¶ 69-80). The case was transferred to New York Civil Court and is pending.

The government is not aware of any cross-claim filed by Bowman against Archer or by Archer against Bowman. The circumstances suggest, however, that such claims may be possible. Either Bowman or Archer could argue that the other is responsible for any misconduct that occurred. Indeed, in a notice of a motion for summary judgment dated February 19, 2009, Bowman sought summary judgment "in favor of the defendant Stephanie Bowman d/b/a Supreme Judgment Recovery, against the plaintiff and the defendant HK Investigations Co, David Gold and Thomas Archer." (Notice at 1 (emphasis added)).

In short, Archer's lawyer in the case before Your Honor represents Archer's co-defendant -- potentially an adverse party to Archer -- in a pending civil lawsuit. Bowman may have an interest in Archer's criminal case that conflicts with Archer's interest. For example, if Archer is convicted of fraud, that conviction may support a claim by Bowman against Archer in the civil litigation.¹ Ms. Alomar's obligations to Bowman therefore may conflict with her obligations to Archer.

When a court has been informed of the possibility of a defense counsel's conflict of interest, it has a threshold obligation to "investigate the facts and details of the attorney's interests to determine whether the attorney in fact suffers from an actual conflict, a potential conflict, or no genuine conflict at all." United States v. Levy, 25 F.3d 146, 153 (2d Cir. 1994). If the district court determines that the defense counsel has an actual or potential conflict, the court has a "disqualification/waiver obligation" to determine whether the conflict is so severe as to obligate the court to disqualify the attorney or a lesser conflict that can be waived in a Curcio hearing. Id. Specifically, the court should: 1) "advise the defendant of the dangers arising from the particular conflict;" 2) "determine through questions that are likely to be answered in narrative form whether the defendant understands those risks and freely chooses to run them;" and 3) "give the defendant time to digest and contemplate the risks after encouraging him or her to

¹ It appears that Archer's alleged misconduct with respect to Zaichik post-dates his alleged criminal conduct.

seek advice from independent counsel." *Id.* at 153 n.4 (internal quotation marks omitted).

Accordingly, we request that the Court conduct a Curcio hearing to explore the potential conflict of interest and determine whether Archer wishes to knowingly and voluntarily waive his right to conflict-free counsel.

Respectfully submitted,

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